IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1232 OF 1998

Dewoo Krishna Gawde
& Ors. ... Petitioners.

vs.

Shri Ram Mills
& Ors. ... Respondents.

Ms. Apoorva Kaiwar i/by Gayatri Singh
for Petitioners.
Mr. C.U. Singh i/by Little & Co.
for Respondents.

CORAM : S.U.KAMDAR, J.
DATE : 5th April, 2006.

ORAL JUDGMENT :

. The present petition challenges the order and judgment passed by the Industrial Court in Complaint (ULP) No. 282 of 1997. Some of the material facts, briefly stated, are as under :-

2. The respondent no. 1 is a textile mill and had at one point of time around 4000 employees. The petitioner workers are employed by the respondent company for last many years and according to the

petitioners they were given work upto 30.7.1996 and with effect from 1.8.1996 no work is given to them. It is the case of the petitioners that the contract of employment between the petitioners and the respondents is still subsisting and valid.

3. Sometime in or about 1987 the company was referred to the Board for Industrial and Financial Reconstruction (BIFR) under the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as SICA). On 31.10.1991 under section 18 of the said Act the revival scheme was sanctioned. Under the said scheme it was provided that the company will operate 1,22,576 spindles, 14,449 looms and process about 80,000 meters of cloth per day. It was also provided that the company will carry out modernisation of the plant and machinery. It is the case of the petitioners that no modernisation was carried out but in place of doing so various departments of the respondent company were slowly and slowly closed down and thus the respondent company indulged in illegal closure of certain departments and consequently stoppage of the work for the various employees. Various employees thereafter filed complaints through the unrecognised union in the Industrial Court under the provisions of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act

(hereinafter referred to as the MRTU & PULP Act). It is the case of the petitioners that during the pendency of the said complaint which was represented by Shriram Mill Kamgar Sanghatana around 2200 workers were forced to resign. Ultimately an order came to be passed by the BIFR recommending winding up of the company . The Company preferred an appeal before the appellate authority under SICA and after hearing the said appeal a fresh revival scheme was sanctioned on 11.10.1994 by AAIFR. Under the said scheme the capacity and functioning of the mill was reduced and the company was required to operate only 40,000 spindles and process 50,000 meters of grey cloth. Consequently about 1400 workers only were to be retained and the balance workers were to be retrenched from the service. Under the said redevelopment scheme it was also provided that the land belonging to the respondent will be sold and the money available from sale of surplus land and FSI will be used in modernising of the remaining departments of the said mill. It is the case of the petitioners that though the excess land was sold no scheme was implemented. Instead all the 1400 permanent workers who were required to be kept in employment by AAIFR were forced to resign and the entire mill has been closed down without obtaining permission from the State Government and without complying with the provisions of law. According to the petitioners, the said mill is closed down since

May, 1996. Sometime on or about 7.11.1996, the respondent once again approached the AAIFR and got the scheme modified. The said scheme envisaged further reduction of the work-force and sale of additional land of about 28000 sq. mtrs. Under the new scheme the company was obliged only to employ 189 workers and the balance were retrenched. However, it is the case of the petitioners that even prior to the amended scheme, the company has been entirely closed down. It is the case of the petitioners that about 1200 workers accepted the voluntary retirement scheme but the petitioners continued to work upto 31.7.1996 in the ring department as substitute employees in place of permanent employees. On 1.8.1996, when they reported for work they were told that there is no work and that they must continue reporting for work and would be provided work as and when available. In the meantime, the respondent company started recruiting contract workers and, therefore, the petitioners registered a complaint before the Labour Commissioner regarding the illegal employment of contract workers. By letter dated 13.11.1996, the Labour Commissioner directed the respondent company to provide work to the petitioners in preference to the contract workers. In fact contractors M/s. Gurubachan Enterprises has been fined under the Contract Labour Act also. However, in view of the persistent refusal of the respondent to give work to

the petitioners, the petitioners filed a complaint of unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act in the Industrial Court. They filed two separate complaint being Complaint (ULP) No. 282 of 1997 and Complaint (ULP) No. 282 of 1997. The said complaints were in respect of two different groups of workers. It is the case of the petitioners that though they were employees of the respondent company and they had completed 240 days of continuous service in number of years in respect of their past service, they were not provided with work and their work was given to the contract workers. It is their case that they have achieved a permanent status by virtue of working for 240 days continuously in many of the previous years. It is thus contended that the petitioners have achieved the permanent status. It is the petitioners case in para 9 of the petition that their services are governed by the Standing Orders certified under the Bombay Industrial Relations Act, 1946 (hereinafter referred to as the BIR Act) and agreements/settlements entered into by the respondent company with the representative union. It is the further case of the petitioners that on 30.5.1995 the respondent company had entered into an agreement with RMMS and under clause 9 of the said agreement dated 30.5.1995 it was provided that the respondent will not employ any contract workers for the normal functioning of the company. Thus, by the

complaint, the petitioners sought two-fold relief (i) that they should be regularised and absorbed in a regular employment and should be given permanency and (ii) that the respondent should be restrained from engaging contract workers. Both the said complaints were heard together and after leading of evidence and hearing of the parties, the impugned order has been passed. The petitioner has led the evidence of three witnesses. It is this order of the Industrial Court which is a common order passed in respect of both the complaints being the order dated 27.2.1998 against which the present writ petition has been filed.

4. The complaint of the petitioners were for various reliefs but in essence the relief sought is two-fold (i) in prayer (d) that the respondent should be directed to assign work to the complainants on the posts which fell vacant and further to declare them permanent employees on those posts and (ii) that the petitioners should be restrained from employing contract labour in the premises of the respondent no. 1 mil. By the impugned order and judgment the Industrial Court has granted part relief i.e. a declaration has been given that the petitioner workers should approach to the RMMS Union for taking up the case of abolition of the permanent posts and their claim for permanency in place of the permanent employees. It

is because RMMS is only the representative union which can raise the said dispute. In so far as the prayer that the respondent cannot engage contract employees is concerned, it has been granted by holding that if the contract employees are engaged then equal opportunity should also be given to the petitioners on the said vacant posts. RMMS being the recognised union is also directed to take up the issues of badli workers i.e. the case of the petitioners herein and ultimately finding is given that the unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act has been partly proved.

5. The learned counsel appearing for the petitioners has contended before me that in so far as rejection of their claim of being granted permanency because they have completed 240 days continuous service in the respondent mill is concerned, the direction given to take up the issue with the RMMS union is challenged by the petitioners herein. In so far as the grant of relief i.e. the respondent should not engage the contractors workers and the petitioners should be given an equal opportunity, that part of the order is not challenged. The learned counsel for the petitioners in support of the aforesaid reliefs sought in the present petition has contended that they have admittedly completed 240 days of continuous work in

the mill establishment and they were allowed to work in the mill premises right upto 31.7.1996 when for the first time the respondent company stopped the petitioners from work and employed contract workers in place of badli workers. It has been further contended that by virtue of the aforesaid, the respondent company has committed unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act and, therefore, the trial Court ought to have granted all the reliefs and ought not to have relegated the petitioners to approach the RMMS being the recognised union for part of the reliefs. In support of the aforesaid contention it has been contended that it is settled law that violation of legal provisions would amount to unfair labour practice under item 9 of Schedule IV of the MRTU & PULP Act and in support thereof a judgment has been relied upon in the case of S.G. Chemicals and Dyes Trading Employees Union vs. SG Chemicals and Dyes Trading Ltd., and anr., reported in (1986) 2 SCC 624 being para 23. It has been contended that the contention of the respondent that the badli passes of the petitioner workers were cancelled and that the posts were abolished and that, therefore, they were not liable to provide work is unsustainable because the passes of the petitioners are not cancelled and for abolition the mill has to follow the procedure for reducing posts as provided in BIR Act.

6. It is further contended that at any rate once the badli worker complete 240 days of continuous service, he ought to be made permanent irrespective of whether there are posts available or not. In support of the aforesaid contention, the judgment of this Court has been relied upon in the case of National Textile Corporation (NM) Ltd., Mumbai vs. Shivaji Gopal Gorule & Anr., reported in 2001 (2) Mh. L.J. 120. It has been further contended that there is no requirement under clause 4C of the Standing Orders that 240 days must be in respect of employment on one particular post. It has been further contended that the mills are still undertaking certain activities and, therefore, the petitioners must be provided with the work. The learned counsel has thereafter contended that though it is true that the petitioners are badli workers, but according to the learned counsel the said badli workers have also been conferred with certain rights. It has been contended that the badli workers who have completed 240 days of continuous work cannot be terminated without following due process of law and in support of the aforesaid judgement reliance has been made on the judgment of this Court in the case of Raymonds Woollen Mills Ltd., vs. C.S. Sonawane & Ors. reported in 1993 II CLR 112 and on the judgment of Gujarat High Court in the case of Deputy Executive Engineer v. Jiviben

V. Pandya, reported in 2000 II CLR 881. It has been contended thus that not granting of the work to the badli workers and to terminate their services without following due process of law is illegal. Reliance is also placed on the judgment of the Apex Court in the case of the the Premier Automobiles Employees' Union and ors. Vs. Premier Automobile Ltd., & Ors., - reported in 1987 I CLR 302. It is thus contended that the petitioners having completed 240 days they should have been absorbed and given a permanent status in the respondent employment.

7. On the other hand, the learned counsel appearing for the respondents has contended that the order passed by the lower authority is legal and valid. It has been contended by the learned counsel for the respondent that admittedly item 9 of Schedule IV pertains to only failure to implement any settlement, agreement, award. It has been further contended that there is no dispute that in so far as the service conditions of the petitioners are concerned, the same are governed by the standing orders for operatives. It has been contended that under clause 3 of the said standing orders, the operatives are classified as permanent, probationary, badlies, temporary and apprentices. The badli worker is one who is employed on the post of permanent operative or probationer who is temporarily absent. It has been further contended

that the right of the badli workers are thus governed by the said standing orders. It has been further contended that by notification issued on 16.10.1981 the said model standing orders for operatives in respect of textile industries are amended and clause 4C has been provided for. It has been contended that under clause 4C a badli or temporary operative who has put in 240 days uninterrupted service in the aggregate in any other undertaking during a period of 12 preceding calendar months, is required to be made permanent in that undertaking by an order in writing signed by the manager or any person authorised in that behalf by the manager irrespective of whether or not his name is on the muster roll of the undertaking throughout the period of the said twelve calendar months. It has been contended that the present complaint which has been filed does not proceed on the footing of any violation of clause 4C as amended by the Model Standing orders. The complaint proceeds on the footing that merely on completion of 240 days in an earlier 12 calendar months the petitioner employees have acquired a status of permanent employee. It has been contended that there is no pleadings in the present complaints indicating that they have claimed any breach of clause 4C of the standing orders. The learned counsel for the respondents has drawn my attention to the pleadings in the complaint which inter alia indicates that in fact the petitioners

are claiming to be absorbed as permanent workers. It has been brought to my notice that a person who seeks to be absorbed as a permanent worker who is in fact a badli or a casual or temporary workers then he has to apply under item 6 of Schedule IV of the MRTU & PULP Act. It has been further drawn to my attention that for the purpose of making an application under item 6 of Schedule IV the complaint must be only by a recognised union under Section 21 of the MRTU & PULP Act. Sub-section (2) of Section 21 which inter alia provides that notwithstanding anything contained in the Bombay Act, no employee in any industry to which the provisions of the Bombay Act, for the time being apply, shall be allowed to appear or act or allowed to be represented in any proceeding relating to unfair labour practices specified in items 2 and 6 of Schedule IV of this Act except through the representative of employees entitled to appear under section 30 of the Bombay Act. It has been thus contended that a complaint under item 2 and 6 of Schedule IV has to be prosecuted by the union and the cause can be taken up only by the union and not by the individual employees. It is thus submitted that, therefore, the Industrial Court has rightly directed the cause to be taken up by the RMMS which is the recognised union in the present case. It has been contended that the pleadings in the complaint are based on a claim of the petitioners of an

absorption by virtue of completion of 240 days and not on the basis of violation of clause 4C of the Standing Orders. It has been submitted that the pleadings are an important factor and in the absence of pleadings about violation of clause 4C of the amended standing orders, the petitioners are not entitled to raise any such claim fork the first time before this Court. It has been submitted that neither in the pleadings nor in the evidence nor in the arguments before the Industrial Court the contention has been raised that there has been a breach or violation of clause 4C of the amended standing orders. In support of the aforesaid contention, the learned counsel for the respondents has relied upon the judgment of the Apex Court in the case of Shankar Chakravarti vs. Britania Biscuit Company, reported in (1979) 3 SCC 371 particularly paras 32 and 33 thereof wherein it has been held that the allegation which is not pleaded, even if there is evidence in support of it, cannot be examined because the other side had no notice of it and if entertained it would be tantamount to granting an unfair advantage to the first mentioned party. It has been further held that this principle applies equally to industrial adjudication. It has been further pleaded that in any event in the present case there is a scheme modified by the AAIFR on 7.11.1996 and it overrides the provisions of the model standing orders in view of clause 29 of the

said model standing orders. The said clause 29 reads as follows :-

> "29. Nothing contained in these Standing Orders shall operate in derogation of any law for the time being in force or to the prejudice of any right under an agreement or contract of service, custom, usage or award applicable to the undertaking."

It has been further contended that the provisions of the SICA overrides the provisions of the model standing orders and, therefore, the respondents cannot be held liable for breach of any such model standing orders.

8. I have considered the contentions of both the parties. Firstly, the complaint is admittedly filed only under item 9 of Schedule IV of the MRTU & PULP Act. The said item 9 of Schedule IV reads as under :-

> "9. Failure to implement award, settlement or agreement."

It has been however contended before me that when the question arises of a breach of settlement and the standing orders amounts to a settlement between

the parties then in that event the complaint is maintainable under item 9 because it would cover the violation of clause 4C of the standing orders which is a part of the settlement. The aforesaid submission, in my opinion requires to be rejected for more than one reason. Firstly it is clear from the pleadings in the complaint that there is no case whatsoever made out of any breach or violation of clause 4C which has been introduced by a notification dated 16.10.1981. Secondly, the pleadings before the Court are on the basis that by virtue of completion of 240 days the petitioners workers are entitled for absorption in a regular employment. The pleadings as they sand before the trial Court squarely fall under item 6 of Schedule IV of the MRTU & PULP Act. The said item 6 of Schedule IV of the said Act reads as under :-

> "6. To employ employees as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent employees."

If that is so then in my opinion, the trial Court was right and justified by virtue of the provisions contained under Section 21 of the MRTU & PULP Act, that it is only the recognised union which is entitled to take up the said cause. Admittedly, in

the present case the recognised union has not filed the complaint nor taken up the said cause. Once it is so, then, in my opinion, the trial Court was right and justified in directing that the recognised union should be approached and they should take up the cause of breach of item 6 of Schedule IV of the MRTU & PULP Act. Thirdly, the contention is for the first time advanced by the petitioner that in fact the clause 4C provides for absorption if they have completed 240 days even in the case of badli workers and once it is so then not absorbing them amounts to breach of standing orders. I do not find any such complaint pleaded before the Industrial Court nor I find from the reading of the workers evidence that any such case is made out. In fact before the trial Court the matter proceeded on the footing that the petitioners are already permanent employees and therefore, they should be absorbed in a permanent employment and a direction was sought. The petitioners are not the permanent employees because even if clause 4C is read it is clear that the petitioners are entitled to be permanent employees but for becoming permanent employees the manager has to issue orders in that behalf. Admittedly no such orders have been issued. The petitioners have not made a complaint before the trial Court that by virtue of non-issuance of such orders under clause 4C, there is breach of clause 4C of the Standing Orders. The petitioners have contended that the

petitioners are regular employees and they should be absorbed even though admittedly they are not the badli workers and admittedly there is no absorption by issuing orders as contemplated under clause 4 C of the amended Standing Orders by the said notification. In that view of the matter, it is not possible to accept the contention of the petitioners that the trial Court was wrong and not justified in dismissing the complaint in part in so far as their relief of getting absorption on the basis of their permanent service by virtue of completion of 240 days in earlier 12 calendar months is concerned.

9. The learned counsel for the petitioners thereafter contended that even if clause 4C of the Standing Orders is not pleaded still the petitioners will be entitled to be treated as permanent employees on completion of 240 days of uninterrupted service in preceding 12 calendar months. In my opinion, even if it is so, still the case will fall under item 6 of Schedule IV of the MRTU & PULP Act and it is only the recognised union who can take up such contention. I am of the opinion that no case is made out by the petitioners for interference with the impugned order passed by the trial Court. Except the relief of absorption the other reliefs are already granted namely, the petitioners should be given work by the respondent in an equal opportunity as that of the contract workers and they

should not be denied work. In so far as the absorption is concerned, the Industrial Court has given direction to the recognised union to take up the said cause as it falls under item 6 of Schedule IV of the MRTU & PULP Act. In that light of the matter, I find no merit in the present petition and accordingly the same is dismissed. However, there shall be no order as to costs.